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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,643	12/29/2000	Kris Fleming	42390P9723	1490

7590
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EXAMINER

BLAIR, DOUGLAS B

ART UNIT	PAPER NUMBER
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2142

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/752,643	Applicant(s) FLEMING ET AL.	
	Examiner Douglas B. Blair	Art Unit 2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30,32-34,37-47 and 49-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30,32-34,37-47 and 49-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 11/14/2006 with respect to the rejection of claims 56-58 based on 35 USC section 101 have been fully considered but they are not persuasive. The applicant argues that because the claims recite an "article" which is specifically described in the statute that the claim is statutory. This reasoning, however, is flawed for two reasons. First, the term "article" is not even mentioned in the 101 statute, so clearly it is not specifically described as alleged by the applicant. Second, even if the applicant is trying to refer to an "article of manufacture", the applicant's reasoning is conclusory because it concludes that the claim is directed towards an "article of manufacture" even though the evidence from the applicant's specification contradicts such a conclusion. **A transmissive medium is not an article of manufacture**, nor does it fall into any other statutory category. On further review claims 44-46 and claims 55-58 are now rejected under 35 USC section 101.

2. Applicant's arguments, see Remark, filed 11/14/2006, with respect to the rejection(s) of claim(s) 30, 32-34, 37-43, and 45-58 under 35 USC section 103(a) by the Bluetooth Specification and Kammer have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Kammer. A close review of Kammer shows that Kammer anticipates the applicant's invention as claimed and as disclosed for reasons discussed in the following rejection.

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3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 44-46, 55-58, and 61 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The applicant's specification states that a machine-readable medium could be a transmissive medium that could be construed as an energy source such as a carrier wave and therefore makes claims 44-46 and 55-58 non-statutory.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 38-40, 51-52, and 59 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The applicant's specification does not disclose the corresponding structure of the means-plus-function limitations of claims 38-40, 51-52, and 59. According to MPEP section 2181(II), the corresponding structure of the means-plus-function limitation must be disclosed in the specification itself in a way that one skilled in the art will understand what structure will perform the recited function.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 38-40, 51-52, and 59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Because the corresponding structure of the means-plus-function limitations of claims 38-40, 51-52, and 59 is not disclosed by the applicant's specification, the claims are indefinite. See MPEP section 2181(III).

Claim Objections

9. Claim 37 objected to because of the following informalities: it depends on claim 36 which is cancelled. For examination purposes it will be assumed to have meant to depend upon claim 30. Appropriate correction is required.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 30, 32-34, 37-47, and 49-61 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,826,387 to Kammer.

12. Kammer teaches the invention as claimed (as in exemplary claim 30) including a method comprising: receiving a service record at a first radio device from a second radio device through

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a virtual communications port, the service record including a service record handle to identify the service record, a service name to identify a service of the second radio device, and a virtual communications port associated with the service record (**col. 13, lines 6-14, Device B receives the service record including the name from Device A**); maintaining a database of radio device service records containing a service name and an associated virtual communications port for each service record (**col. 12, lines 51-58, both Devices A and B can be considered to maintain database for service records**); sending a connection request from the first radio device to the second radio device, the connection request including the service name to indicate the appropriate service (**col. 13, lines 15-17, the service name is used to locate the application**); and connecting to a first service for which a radio device service record exists in the database utilizing the service name of the first service to initiate the connection (**col. 13, lines 16-22, the connection is established after the service name is used to locate the application**).

13. Kammer teaches a method (as in claim 32) wherein receiving a service record comprises receiving a service record from an advertising device (col. 13, lines 6-14).

14. Kammer teaches a method (as in claim 33) comprising sending a query and wherein receiving a service record comprises receiving service record in response to a query (col. 13, lines 6-14).

15. Kammer teaches a method (as in claim 34) wherein sending a query is sent utilizing a Bluetooth protocol SDP request and wherein the service record is received in the form of an SDP response (col. 13, lines 6-14).

16. Kammer teaches a method (as in claim 37) further comprising connecting to a second service for which a radio device service record exists in the database utilizing the service name of

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the second service to initiate the connection (col. 13, lines 6-23, Kammer is clearly not limited to just one service).

17. Kammer teaches a method (as in claim 58) wherein sending a connection request comprises sending the connection request without including an indication of the virtual communications port through which the service record was received (col. 13, lines 14-19, only the service name is used to request/locate the service. Only then is the connection established using the ports).

18. As to claims 38-40 and 59, Kammer teaches an apparatus that implements the method of claims 30, 32-34, 37, and 58.

19. As to claims 41-43 and 60, Kammer teaches radio devices that implement the method of claims 30, 32-34, 37, and 58 (Kammer uses Bluetooth devices just as the applicant).

20. As to claims 44-46 and 61, Kammer teaches a medium embodying instructions for implementing the method of claims 30, 32-34, 37, and 58.

21. As to claims 47 and 49-57, they correspond to the method of claims 30, 32-34, 37-46, and 58-61 with just the nomenclature of the first and second devices changed, therefore they are rejected for the same reasons pointed out previously.

Conclusion

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas B. Blair whose telephone number is (571) 272-3893. The examiner can normally be reached on 9:00am-5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Douglas Blair

DBB



ANDREW CALDWELL
SUPERVISORY PATENT EXAMINER